

REMARKS

Please reconsider the present application in view of the following remarks. Applicant thanks the Examiner for carefully considering the present application.

I. Disposition of the Claims

Claims 31-49 are currently pending.

II. Objection(s) under MPEP § 821.03

The Examiner deemed claims 31-49 in the amendment filed on June 16, 2006 as being drawn to a non-elected invention; the elected invention being that originally claimed (*see* MPEP § 818.02(a)). The Examiner sets forth that in the original claims (these claims canceled by way of said amendment), “the innovation was dissimilar” from that now represented in claims 31-49. *See* instant Office Action, page 3. However, for at least the reasons set forth below, this basis is improper.

37 CFR § 1.145 states:

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144.

See 37 CFR § 1.145 (emphasis added); MPEP § 821.03. Moreover, in order to hold Applicant to a particular claim grouping, the Examiner must show that (i) the inventions are independent or distinct as claimed and (ii) there would be a serious burden on the examiner if restriction is not required. *See* MPEP § 803.

A simple reading of, for example, original claim 1 and pending claim 39 reveals that

respective claimed inventions are related. *See* MPEP § 802.01 (“Two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect.”). Here, original claim 1 and pending claim 39 are both directed to an electronic gaming system having in part: a broadcast station for communicating game play signals; and a device that is placed in condition for game play using the game play signals when the physical location of the remote gaming device is within an authorized gaming area. Claim 1’s recital and claim 39’s silence of the broadcast station being an RF sub-carrier broadcast station does not render these claims independent and distinct. Moreover, the Examiner has not shown why it would be a “serious burden” to search and examine the pending claims relative to that attendant with the originally filed claims. Although the original and pending claims are not verbatim identical, the claims are clearly related, and thus, Applicant should not be required to revive and elect the previous claims and cancel the pending claims.

Further, if the Examiner’s “the innovation was dissimilar” language was intended to support the “independent and distinct” requirement cited above, such “a mere statement of conclusion is inadequate.” *See* MPEP § 808.01. The Examiner’s objections amount to an attempt to restrict Applicant from making any substantive claim amendments to which Applicant is otherwise entitled.

In view of the above, requiring Applicant to elect the claimed invention represented in now-canceled claims 1-30 is improper. Accordingly, withdrawal of the objections to the claims is respectfully requested.

III. Conclusion

The Examiner is encouraged to contact the undersigned attorney if it would be beneficial to further advance the prosecution of the application.

Please apply any charges not covered, or any credits, to Deposit Account 19-2555 (Reference No. 24207-11488).

Respectfully Submitted,
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